

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number
P.C. 11/19/03 Item: 3.d.

File Number
CP03-056

Application Type
Conditional Use Permit

Council District
1

Planning Area
West Valley

Assessor's Parcel Number(s)
303-42-023

STAFF REPORT

PROJECT DESCRIPTION

Completed by: **Darren McBain**

Location: South side of Stevens Creek Boulevard approximately 100 feet easterly of Rosewood Avenue (3242 Stevens Creek Boulevard)

Gross Acreage: **0.16**

Net Acreage: **0.16**

Net Density: **n/a**

Existing Zoning: **CN Commercial Neighborhood**

Existing Use: **Wholesale automobile broker (no on-site vehicle storage)**

Proposed Zoning: **No change**

Proposed Use: **Retail automobile sales**

GENERAL PLAN

Completed by: **DM**

Land Use/Transportation Diagram Designation
General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **DM**

North: **Commercial**

City of Santa Clara

East: **Offices**

CN Commercial Neighborhood

South: **Offices**

CN Commercial Neighborhood

West: **Commercial**

CN Commercial Neighborhood

ENVIRONMENTAL STATUS

Completed by: **DM**

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on
☐ Negative Declaration adopted on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: **DM**

Annexation Title: **Winchester No. 6**

Date: **7/19/1957**

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☐ Uphold Director's Decision

Date: _____

Approved by: _____
☒ Action
☐ Recommendation

OWNER/APPLICANT

Stevens Creek Auto Center, Attn.: Abdol Reza Azimzadeh
3242 Stevens Creek Boulevard
San José, CA 95117

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: DM

Department of Public Works

None received

Other Departments and Agencies

None received

GENERAL CORRESPONDENCE

None received

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Abdol Reza Azimzadeh (Stevens Creek Auto Center), is requesting a Conditional Use Permit (CUP) to allow retail sales of automobiles at an existing commercial building located at 3242 Stevens Creek Boulevard, in the CN Commercial Neighborhood Zoning District. The Zoning Ordinance requires a Conditional Use Permit for retail auto sales in the CN Commercial Neighborhood Zoning District. The project location is an approximately 1,000-square-foot commercial building on a .16-acre (6,970-square-foot) site. Commercial uses exist on all sides of the site.

Project Description

The proposal is for a retail used-car lot. The applicant currently operates an auto sales facility at this location. However, the applicant's current State Department of Motor Vehicles (DMV) license only allows the site to be used as a sales office ("wholesale broker"), with no on-site vehicle storage. Wholesale auto brokering is permitted as of right in the CN district. However, retail sales, with on-site vehicle storage, requires a CUP.

The project includes delineation of a specific display area for the storage of for-sale vehicles, plus three on-site parking spaces to be kept available for customer and employee parking. No on-site vehicle repair activities are proposed or approved under this permit.

ENVIRONMENTAL REVIEW

The Director of Planning has determined that this project is exempt from environmental review under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act. This section of the Guidelines provides an exemption for the operation, leasing, etc. of existing structures with no significant expansion of use. The proposal is for a commercial use in an existing commercially used building in a commercial area. It is staff's opinion that the proposal adequately conforms to this section of the CEQA Guidelines.

GENERAL PLAN CONFORMANCE

The proposed commercial use is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial.

ANALYSIS

The key issues analyzed for the proposed project are conformance to the Zoning Ordinance regulations related to retail auto sales and conformance to the Commercial Design Guidelines (CDGs). As described in greater detail below, it is staff's opinion that, although the site is small and somewhat limited in usability as a used-car lot, the proposed project adequately conforms to the City's criteria for this type of land use.

Conformance to the Zoning Ordinance

Parking: The Zoning Ordinance requires one "separate" parking space (for employees and customers) per 2,500 square feet of outdoor vehicle display area. The proposed site plan includes an approximately 2,030-square-foot display area, which technically would require only one parking space. However, at staff's direction, the proposed site plan includes three parking spaces. In addition, a 2001 aerial photo of the site, which appears to have been used as a retail used-car lot at that time, shows three parking spaces and the rest of the site as vehicle display area, similar to the proposed site plan.

A site visit by Planning staff in October 2003 confirmed that the site was in fact being used for on-site vehicle storage, in conflict with the applicant's current DMV approvals as noted in the Background section on page 1 of this report. In both the 2001 aerial photo and during staff's site check, for-sale vehicles were parked in the driveway, restricting vehicular access to and from the site by customers, employees, and emergency vehicles and creating a potentially hazardous condition in relation to fast-moving traffic on Stevens Creek. Staff's recommendation for this permit includes a condition of approval (see below) prohibiting parking on the driveway, and requiring signage and striping to this effect. Because of the small size of this site, the very limited display area available for appropriate storage of for-sale cars, and the location of the display area (in the back of the site, behind the building) vehicle storage in the driveway might continue to be a problem in the future. Violation of this condition of the CUP could be considered by the Planning Commission as part of a hearing for an "Order to Show Cause". Under this process, the permit could be revoked or more stringent conditions imposed.

Existing building: The project location is an existing, commercially used building. The building appears to have originally been built as a single-family house, but is believed to have been used commercially since at least the 1960s. The City of San José began requiring Planning approval (initially a CUP, later changed to a Special Use Permit) in 1970 for conversion of a residential building to commercial uses. It has not been conclusively shown that the conversion of the structure on this site was performed before then, and no records of a Planning permit to perform the conversion have been located. Therefore, this conditional use permit acknowledges the conversion and constitutes Planning approval thereof. The applicant is conditioned to obtain a Certificate of Occupancy from the Building Division in order to complete the legal conversion into a commercial building.

No physical changes to the exterior appearance of the building are proposed or approved under this permit. However, the building has been painted a flat gray color on all surfaces, which is not desirable for a commercial building facing out onto a public street. This permit therefore includes a condition requiring the applicant paint the building trim a different color, to the satisfaction of the Director of Planning. The existing landscaping on the site is deemed adequate.

Existing billboard sign: The existing site conditions include a large, tall billboard sign. San José began requiring a CUP for billboards in 1969. Prior to that time, billboards required only a Building Permit. The applicant has obtained a copy of a 1967 Building Permit (see attached) that appears to include approval for the sign in question. Because no significant physical modifications are currently proposed to the site, this sign is proposed to remain. However, if the site were proposed to be substantially redeveloped in the future, then the disposition of the sign could then be reviewed and a recommendation for removal or relocation made, as deemed appropriate at that time.

Commercial Design Guidelines

The Commercial Design Guidelines include a section related to the Automobile Dealerships. The specific design policies are more applicable to the design and construction of new car dealership facilities rather than conversions of small existing retail facilities. Most of the policy recommendations address the vehicle repair component of dealership facilities and appropriate design measures to minimize their visibility from the street or impacts to nearby residential uses. In this case, these design policies are not applicable to this proposal. This small-scale project, which does not include a repair facility is in substantial conformance to the intent of the guidelines.

Conclusion

The proposal conforms to the requirements of the Zoning Ordinance with regard to allowed uses and parking. The building in which the proposed use is to be located is located in a commercial area with no adjacent residences. Planning staff does not expect that the proposal would adversely affect any nearby land uses. The site does seem to have limited usability as a used-car lot. Given its small size and small display area, as well as the location of the display area in the rear of the site where visibility is less than ideal, it seems possible that inappropriate parking in the driveway may resurface as a Code Enforcement problem in the future. However, the “Fire Lane—No Parking” striping and signage of the driveway, required under this permit, may adequately address the driveway parking issue. Although the site is not ideal for car sales, car sales are an allowed use in the CN Commercial Neighborhood District and the proposal meets the applicable criteria for review. Staff further anticipates that more intensive redevelopment of this site will occur in the foreseeable future, and that the proposed use will be replaced in the long term.

RECOMMENDATION

Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site is located on the south side of Stevens Creek Boulevard approximately 100 feet easterly of Rosewood Avenue (3242 Stevens Creek Boulevard).

2. The site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is located in the CN Commercial Neighborhood Zoning District.
4. The subject site is generally surrounded by commercial land uses.
5. The site is developed with an approximately 1,000-square-foot, commercially-used building. The existing building appears to have been built as a single-family house and does not appear to have previously been legally converted into a commercial building.
6. The project proposes the retail sale of automobiles with use of the existing building.
7. Vehicle repair is not proposed or allowed as an ancillary use to auto sales.
8. The Zoning Ordinance requires a Conditional Use Permit for retail auto sales in the CN Commercial Neighborhood Zoning District.
9. The Zoning Ordinance requires a Special Use Permit for the conversion of a residence into a commercial building.
10. A Conditional Use Permit satisfies the requirement for a Special Use Permit.
11. A billboard sign exists on the site.
12. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or

- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
 3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth are hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the

capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **No New Construction.** No additional construction or development is approved under this permit.
3. **Certificate of Occupancy Required.** A Certificate of Occupancy from the Chief Building Official is required in order to complete the conversion of this residential structure into a commercial structure. Within 60 days of approval of this permit, the applicant shall complete any required upgrades to the structure, as identified by the Building Division, and submit evidence of obtainment of a Certificate of Occupancy to the Director of Planning. Failure to comply with this condition shall render this permit null and void.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **No Vehicle Repair.** No repair or cleaning of vehicles is allowed or approved under this permit.
6. **Parking.**
 - a. The three parking spaces shown on the site plan shall be available and appropriately marked for customer and employee parking, and shall not be used for storage or display of stock-in-trade. Storage and display of stock-in-trade shall be limited to the display area shown on the approved site plan.
 - b. No parking, vehicle display, or vehicle storage shall take place in the driveway. The driveway shall be marked with "Fire Lane—No Parking" signage and striping, to the satisfaction of the Director of Planning and the Fire Chief.
7. **Building Exterior.** Within 30 days of approval of this permit, the applicant shall repaint the building trim with a different color, to the satisfaction of the Director of Planning.
8. **Vehicle Storage.** All stock in trade (vehicles for sales) shall be stored only in area as designated on the approved plans.
9. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
10. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and

after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit/Liquor License Exception Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit/Liquor License Exception Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit/Liquor License Exception Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.